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BUREAU OF THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MURPHY
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**AZ CORP COMMISSION
DOCUMENT CONTROL**

NEW

In the matter of:

21st CENTURY SATELLITE
COMMUNICATIONS, INC.
14910 Winding Creek Court, Suite 101A
Tampa, Florida 33613

HOWARD S. BALDWIN
5926 E. Lewis Av.
Scottsdale, AZ 85257

GLENN A. LIBERATORE FINANCIAL
SERVICES
165 W. Canyon Crest Rd., Suite 305
Alpine, UT 84004

GLENN A. LIBERATORE
165 W. Canyon Crest Rd., Suite 305
Alpine, UT 84004,

Respondents.

DOCKET NO. S-03449A-01-0000

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
ORDER FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES AND
FOR OTHER AFFIRMATIVE
ACTION**

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents have engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

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II.

RESPONDENTS

2. 21st CENTURY SATELLITE COMMUNICATIONS, INC. ("21st CENTURY"), is a foreign corporation whose current address is 14910 Winding Creek Court, Suite 101A, Tampa, Florida 33613.

3. HOWARD S. BALDWIN ("BALDWIN") is an Arizona resident whose current address is 5926 East Lewis Av., Scottsdale, Arizona 85257.

4. GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS") is a company located at 165 W. Canyon Crest Road, Suite 305, Alpine, Utah 84004.

5. GLENN A. LIBERATORE ("LIBERATORE") is a Utah resident whose current address is 165 W. Canyon Crest Road, Suite 305, Alpine, Utah 84004. LIBERATORE is the owner of GALSF.

6. The respondents may be collectively referred to as "RESPONDENTS."

III.

FACTS

8. Baldwin is licensed in Arizona to sell insurance.

The 21st CENTURY Promissory Note Scheme

9. On or about February 18, 1998, BALDWIN entered into a contract with GALSF to sell promissory notes issued by 21st CENTURY. 21st CENTURY is a Florida based company that allegedly installed satellite antenna equipment at gated communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide. 21st CENTURY offered its promissory notes through marketing agents, such as GALFS and LIBERATORE, who recruited sales agents such as BALDWIN. 21st CENTURY paid commissions of between 12% and 23%. The 21st CENTURY promissory notes stated that interest payable to the note holders was 13% per annum. The notes offered were generally for five years terms. In addition, some investors received promises of an additional profit incentive. That additional profit incentive provided that the investor would receive 25% of 21st CENTURY's profit, in

1 proportion to the amount the investor invested compared to the total capital cost of equipment. Despite
2 such a promise, no Arizona investor received any return from the profit incentive.

3 10. RESPONDENTS sold at least 18 promissory notes to at least 14 Arizona investors for a
4 total investment of at least \$268,000. The notes were sold from April 1998 through February 2000.

5 11. BALDWIN conducted no due diligence prior to offering the promissory notes to
6 investors, other than talking to LIBERATORE about 21st CENTURY. He failed to inquire as to the
7 investor's financial status. He told investors that there was little risk from the notes as the notes were
8 secured by a UCC-1 that would be filed by 21st CENTURY. He took no steps to ascertain whether 21st
9 CENTURY actually filed the UCC statement or whether 21st CENTURY had any assets to secure the
10 note. BALDWIN relied entirely upon the information provided by LIBERATORE in offering the notes
11 to investors. He obtained no information from any independent source prior to offering the notes.

12 12. BALDWIN did not inform the investors that the above promissory notes were not
13 registered as securities in Arizona or exempt from registration, failed to inform the investors that he was
14 not registered as a securities dealer or salesman, failed to fully disclose the financial incentives of up to
15 12 % commissions that he received for selling the promissory notes and failed to provide full disclosure
16 regarding the investment including risk, disclosure statements, prospectuses, financial statements or his
17 lack of due diligence in investigating the investment.

18 13. 21st CENTURY made interest payments until October 2000, when it defaulted on its
19 notes. No interest payments have been made since that time. No investor has received his or her
20 principal back from 21st CENTURY. Despite the existence of the UCC paperwork, no security has
21 been foreclosed upon on behalf of any investor.

22 The Viatical Policies

23 14. In or about 1997, BALDWIN sold at least two investment contracts, in the form of viatical
24 settlement contracts, to investors. One of the contracts was obtained through GALFS and LIBERATORE.
25 One investor purchased two contracts for \$10,000 each, while the other purchase one contract for \$16,794
26 in her Individual Retirement Account ("IRA").

16. The investor who purchased the viatical contract obtained through GALFS, LIBERATORE and BALDWIN bought, at BALDWIN's recommendation, parts of four insurance policies. All these policies had previously been sold as viatical contracts and were resold in this transaction. BALDWIN told the investor that at least one of the viator's life expectancy was zero. He based this representation on the fact that when the viator had his medical examination done in 1994, the life expectancy was determined to be between six to 12 months, thus in 1997, the viator, still alive, should have a zero life expectancy.

VIOLATION OF A.R.S. § 44-1841

15 17. From on or about 1997, RESPONDENTS offered or sold securities in the form of notes
16 and investment contracts, within or from Arizona.

17 18. The securities referred to above were not registered pursuant to the provisions of Articles
18 6 or 7 of the Securities Act.

19. This conduct violates A.R.S. § 44-1841.

VIOLATION OF A.R.S. § 44-1842

23 20. RESPONDENTS offered or sold securities within or from Arizona, while not registered
24 as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

25 21. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

22. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. In connection with the 21st Century Promissory Note Scheme, RESPONDENTS' conduct includes, but is not limited to, the following:

- a) Failing to inform investors that the promissory notes were not registered as securities in Arizona and were not exempt from registration;
- b) Failing to disclose the financial incentives of up to 12 % commissions that BALDWIN received for selling the promissory notes;
- c) Failing to provide full disclosure regarding the risk of the investment, including the potential to lose principal, the fact that UCC filings, even if filed, must be foreclosed upon in order to collect against any assets, the possibility that no assets existed to secure the UCC filings and the riskiness of investing in a company with a limited track record;
- d) Failing to provide investors with disclosure statements, prospectuses or financial statements including but not limited to past operations, balance sheets, statements of income, retained earnings, cash flows and uses of proceeds that would reflect the financial position of these entities; and
- e) Failing to disclose BALDWIN's own lack of due diligence in investigating the investment.

23. This conduct violates A.R.S. § 44-1991.

VII.

24. RESPONDENTS 21st CENTURY, GALFS and LIBERATORE participated in or induced the sale of a security within the meaning of A.R.S. § 44-2003(A). Therefore, RESPONDENTS GALFS and LIBERATORE are liable for the above violations of A.R.S. § 44-1991.

VIII.**VIOLATION OF A.R.S. § 44-1991****(Fraud in Connection with the Offer or Sale of Securities)**

25. In connection with the offer or sale of securities within or from Arizona, GALFS, LIBERATORE and BALDWIN, directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. In connection with the viatical settlement policies, GALFS, LIBERATORE and BALDWIN's conduct includes, but is not limited to, the following:

- a) Failing to inform investors that the viatical settlement policies were not registered as securities in Arizona and were not exempt from registration;
- b) Failing to provide full disclosure regarding the investment including such as:
 - i. the fact that an insured person could live longer than predicted with a corresponding detrimental effect on profits;
 - ii. the fact that medical advisors may have misdiagnosed or miscalculated the extent and gravity of an insured's condition;
 - iii. the fact that the investment is illiquid and there would be no public market available for resale or other disposal of the security;

- iv. the fact that an insured person, having received payment on the policy, may fail to comply with requests for continued contact, and may in fact become impossible to locate;
 - v. the fact that certain policies, such as group policies, may be subject to change, and may not provide returns as promised;
 - vi. the fact that the investment may not be suitable for persons who have a need for a regular income from their investments;
 - vii. the fact that all involved parties, such as GALFS, LIBERATORE and BALDWIN, and any medical advisors or other participants receive their commissions and fees from the investment up front, thus the investor is reliant on the continuing operations of these parties in order to receive a return;
 - viii. the fact that an investment made with IRA funds may require mandatory withdrawals before the investment itself matures, thereby causing tax issues for the investor.
- c) Failing to provide full disclosure that the medical reports on the viators were outdated;
 - d) Failing to provide disclosure statements, prospectuses or financial statements of the viatical service providers including but not limited to past operations, balance sheets, statements of income, retained earnings, cash flows and uses of proceeds that would reflect the financial position of these entities;
 - e) Failing to inform at least one investor that she would need to pay the policy premiums if the viator lived longer than expected.;
 - f) Failing to provide investors with any information about the use of investor proceeds, such as the cost to purchase the policy, the fees and commissions payable to GALFS, LIBERATORE and BALDWIN, medical advisors, or any other participants in the program;

- 1 g) Failing to provide investors with information that would allow them to verify the
2 existence and terms of a policy or its provisions.

3 26. This conduct violates A.R.S. § 44-1991.

4 **IX.**

5 27. RESPONDENTS GALFS and LIBERATORE participated in or induced the sale of a
6 security within the meaning of A.R.S. § 44-2003(A). Therefore, RESPONDENTS GALFS and
7 LIBERATORE are liable for the above violations of A.R.S. § 44-1991.

8 **X.**

9 **REQUESTED RELIEF**

10 The Division requests that the Commission grant the following relief against RESPONDENTS:

- 11 1. Order RESPONDENTS to permanently cease and desist from violating the Securities
12 Act, pursuant to A.R.S. § 44-2032;
- 13 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from
14 their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-
15 2032;
- 16 3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five
17 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
- 18 4. Order any other relief that the Commission deems appropriate.

19 **XI.**

20 **HEARING OPPORTUNITY**

21 RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A
22 request must be in writing and received by the Commission within 10 business days after service of this
23 Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket
24 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket
25 Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained
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1 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
2 www.cc.state.az.us/utility/forms/index.htm.

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20
4 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or
5 ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without
6 a hearing, enter an order against each RESPONDENT granting the relief requested by the Division in this
7 Notice of Opportunity for Hearing.

8 Persons with a disability may request a reasonable accommodation such as a sign language
9 interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood,
10 ADA Coordinator, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should
11 be made as early as possible to allow time to arrange the accommodation.

12 Dated this 17th day of August, 2001.

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15 Mark Sendrow
16 Director of Securities

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Memorandum

DATE: August 14, 2001
TO: Nancy Cole
Docket Control
FROM: Mark Dinell
Securities Division
RE: 21st Century Satellite
Docket No. S-03449A-01-0000
Assigned Staff
CC: Mabel Aldridge

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NEW YORK STOCK EXCHANGE
SECURITIES DIVISION
DOCKET CONTROL

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- ☒ Mark Sendrow
- ☒ LeRoy Johnson
- ☐ Matthew Neubert

Mark Dinell (Staff Attorney)

Ron Clark (Staff Investigator)

Note: The Assistant Attorney General assigned to this matter is: Moirra McCarthy.